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to	House Committee on Great Lakes and the Environment Senate Committee on Natural Resources	from	David Quinton Worthams, Legislative Associate
cc		date	4/1/09
		subject	HB 4677, HB4678, SB 388, SB 389 - OPPOSED

The Michigan Municipal League, the association of the 533 cities and villages in the state for over 100 years, opposes House Bills 4677 - 78 and Senate Bills 388-89. We would like to take this opportunity to share with the Committees the following thoughts on the introduced versions of the bills.

The Supreme Court, in deciding *Bolt v City of Lansing* (221 Mich App 79; 561 NW2d 432 (1997)) established the characteristics of a "fee" and provided three tests in determining whether something is a fee or a tax. According to the Court, those tests are:

- It must serve a regulatory purpose - "The first criterion is that a user fee must serve a regulatory purpose rather than a revenue-raising purpose."
- It must be proportional to the cost of the service - "A second, and related, criterion is that user fees must be proportionate to the necessary cost of the service."
- It must be voluntary - "... 'The price of water is left to be fixed by the board in their discretion, and the citizens may take it or not as the price does or does not suit them' ... Thus, one of the distinguishing factors in *Ripperger* was that the property owners were able to refuse or limit their use of the commodity or service."

We believe these bills fail to meet these criteria and as such should be considered a "tax" under the law. The structure of the language in HB 4678 and SB 389 requires an owner of a motor vehicle to actively "opt-out" of paying *Recreation Passport Fee* or to adopt a statement that they decline to pay the fee because they do not intend to use the motor vehicle to enter any state park or recreation area. Aside from the problems that arise in the enforcement of this statement, this is a different treatment from any of the other "optional fees" that exist in the Michigan Vehicle Code.

For example, any person that wishes to purchase a Michigan State University fundraising plate, as found in MCL 257.811f which reads, in part:

(1) The secretary of state may, upon application, issue 1 fund-raising plate instead of a standard registration plate to a person for use on a passenger motor vehicle or motor home or a pickup truck or van used exclusively to transport personal possessions or family members for nonbusiness purposes.

(2) A person may be issued a fund-raising plate for use on a vehicle under this act by applying to the secretary of state pursuant to section 217. An application for an original fund-raising plate shall be accompanied by a \$25.00 fund-raising donation, payment of the regular vehicle registration tax prescribed under this act, and a \$10.00 service fee. An application for renewal of a fund-raising plate shall be accompanied by payment of the vehicle registration tax required under section 801 and a \$10.00 fund-raising donation. Application for a replacement fund-raising plate shall be accompanied by payment of only the fee prescribed under section 804.

(3) The secretary of state may issue a personalized fund-raising plate upon application and the payment of the personalized registration plate fee prescribed under section 803b in addition to the fees and donations prescribed under subsection (2) and the regular vehicle registration tax prescribed under this act.



michigan municipal league

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In this section, and the other specialty license plate sections of the Michigan Vehicle Code, it is clear that the "fee" is not a mandatory action.

Compare this to the language of HB 4678 and SB 389, which provides in Sec. 805(1), in part:

... the Secretary of State shall not issue or renew a registration for a motor vehicle unless ... a state park, public boating access site, and forest recreation passport fee is submitted to the Secretary of State with the application.

This then also brings us to the requirement that a "fee" be proportional to the cost of providing a service. When the first specialty license plate legislation was brought to the Legislature, the Secretary of State testified that there is approximately a \$10 cost to producing a specialty license plate (including art, design, and production costs). Because the Secretary provided the specific cost for the plates, the "fee" can easily be justified to the service provided.

The Senate Fiscal Analysis does not provide what the "cost" of providing park service is. However, the analysis states that current park permits and boating access permit fees generate about \$11.7 million annually. According to the analysis, 17% of Michigan automobile owners would have to participate in order to generate the same level of revenue. Proponents of the bill will state that 70% of residents in Montana participate in this system, a state which currently uses the proposed method of collecting park fees for its system. It is projected that if 25% of Michigan automobile owners "participate" in this program, \$17.75 million will be raised for parks. If 75% participate in the program, then \$53.25 million will be raised. This brings us to the first criterion established under *Bolt* – "a user fee must serve a regulatory purpose rather than a revenue-raising purpose."

If the proposed "fee" is indeed a tax, then we must review how the revenues raised through this method will be distributed. Under the bills, the revenues raised would be deposited in the State Park Improvement Account, the Waterways Account, the Local Public Recreation Facilities Fund, and the Forest Recreation Account.

Please note that Article IX, Section 9 of the Michigan Constitution of 1963 provides the following:

All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and to propel aircraft and on registered motor vehicles and aircraft shall, after the payment of necessary collection expenses, be used exclusively for transportation purposes as set forth in this section.
(emphasis added)

We believe that the "tax" levied by this method is one that is imposed on registered motor vehicles and as such must be used exclusively for transportation purposes. The Constitution does not allow transportation related revenues to be used for the parks system. Because of the proposed distribution method, we believe that these bills are unconstitutional.

Our transportation infrastructure, at both the state and local levels, is crumbling and transportation revenues are decreasing. The recent Transportation Funding Task Force (TF2) report has recommended that in order for us to keep what we have today, Michigan must double our investment in our roads, bridges, airports, and transit systems. Members of the 95th Legislature will hopefully begin to tackle the transportation funding problem in the near future. However, creating a new transportation based tax and redirecting that revenue to support state parks will only muddy that debate and confused the issue.

Because of these reasons, the Michigan Municipal League opposes this package of bills. While we appreciate the need to support our state parks, we cannot do so at the expense of our transportation system. Please let me know if you have any questions about the League's position. Thank you for your attention to this matter.